

# **Committee on Resources**

## **Subcommittee on Water & Power**

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### **Witness Statement**

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**Statement of Eluid Martinez  
before the  
Subcommittee on Water and Power  
Committee on Resources  
U. S. House of Representative**

**September 30, 1999**

My name is Eluid Martinez. I am Commissioner of the U.S. Bureau of Reclamation. I am pleased to provide the Administration's testimony on H.R.2918, the Dakota Water Resources Act of 1999.

Mr. Chairman, H.R. 2918 would alter the Garrison Diversion Unit of the Pick Sloan Missouri Basin Program as currently authorized to increase the funding authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes.

First, I would like to express my appreciation to the North Dakota delegation for their continued willingness to work with the Bureau of Reclamation and the Administration on these important matters. In the past several years, a great deal of progress has been made on a number of longstanding and extremely difficult issues. The delegation, as well as the North Dakota Governor's office, State legislative leaders, the State Engineer, the Conservancy District and others have worked hard along with the Administration, Reclamation and other stakeholders to find solutions.

Since the bill was introduced, the Administration has had many hours of discussions with the North Dakota delegation working to address the significant issues that are associated with this legislation. We believe we have reached agreement on nearly all of these issues and we appreciate the willingness of Mr. Pomeroy and the delegation to include them in this legislation. The Administration supports this legislation even as we work to resolve the very few remaining issues currently under discussion.

### **Background**

Mr. Chairman, the Garrison Diversion Unit (GDU) has had a long history. I will not go into great detail, but there are several things that are important to note in order to provide context for consideration of this legislation and for the issues associated with it.

The Garrison Diversion Unit in North Dakota is part of the Pick Sloan Missouri Basin Program (PSMBP), which was originally authorized as part of the Flood Control Act of 1944. Originally known as the Missouri-Souris project, the authorization envisioned irrigation development of 1,275,000 acres in the state of North Dakota.

In 1957, the Bureau of Reclamation completed the feasibility report on the Garrison Unit of the PSMBP. In that report, submitted to Congress, Reclamation recommended the development of 1,007,000 acres of irrigation and in 1965, P.L. 98-108 authorized construction of 250,000 acres as the initial stage of the project.

Over the ensuing years, it became increasingly evident that the level of development envisioned in the 1965 Act raised environmental and economic concerns. Concerns were also raised that the Act might result in violations of the International Boundary Water Treaty of 1909 with Canada. Consequently, in 1984, Public Law. 98-360 directed the Secretary of the Interior to appoint a commission to examine the water supply needs in North Dakota and to make recommendations on how to reformulate the project.

In December 1984, the Commission issued its final report, which included the following major recommendations: (1) Reduce irrigation development to 130,940 acres, of which none would be located in the Hudsons Bay Drainage and 17,580 of which would be developed on two Indian Reservations that were most impacted by the initial development; (2) Develop Municipal, Rural and Industrial (MR&I) water service for as many as 130 towns and rural areas, and three Reservations in the State; (3) Develop a water treatment facility to provide MR&I water to Fargo and Grand Forks; (4) Mitigate impacts to fish and wildlife, and (5) Develop recreational sites.

In 1986, Congress passed the Garrison Diversion Unit Reformulation Act of 1986 (P.L. 99-294), which generally authorized the recommendations of the GDU Commission's final report.

In 1990, The Department of the Interior's Office of the Inspector General completed a review (OIG Report 90-49) of the financial issues associated with the project. The report stated that the "operating costs assigned to irrigators will exceed their ability to pay because the project as reformulated does not appear to be financially feasible." In other words, it concluded that the farmers would be unable to pay their estimated operations and maintenance (O&M) costs as is required under Reclamation law. This fact led to the Inspector General's conclusion that the irrigation component of the Garrison Diversion Unit was economically infeasible.

In response to the OIG Report, Secretary Lujan appointed a GDU Task Group to evaluate and make recommendations on how to proceed with this project, given the findings of the OIG report. In October 1990, the GDU Task Group Report recommended termination of Federal funding for the development and construction of non-Indian irrigation facilities and for the principal supply works, but recommended continuation of the MR&I program. Since that time, the recommendations of this Task Group have been the basis for the policies of both the Bush and Clinton Administrations with respect to this Project, and has guided subsequent budget requests.

In 1993, in an attempt to develop a consensus solution to meeting the contemporary water needs of the State, the North Dakota Water Management Collaborative Process was initiated whereby all interested stakeholders were convened.

In 1995, after the initiation of several studies, and a great deal of hard work by the parties, the Collaborative Process was terminated without reaching a consensus on how GDU should be completed to best meet the contemporary water resource needs of the State. However, Reclamation continued to work towards completion of the studies it had agreed to undertake.

In 1998, the delegation introduced a revised and reformulated Dakota Water Resources Act that

altered the Garrison Diversion Unit of the Pick Sloan Missouri Basin Program as authorized in 1986 to increase the funding authorization levels for State and Indian tribal, municipal, rural, and industrial water supplies, to meet current and future water quantity and quality needs of the Red River Valley, to deauthorize certain project features and irrigation service areas, to enhance natural resources and fish and wildlife habitat, and for other purposes.

In summary, Mr. Chairman, the Pick Sloan Missouri Basin Program, of which the Garrison Diversion Unit is an integral part, when conceived foresaw a comprehensive system of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water supplies, and hydroelectric power generation for ten states. That plan envisioned 213 multi-purpose projects providing over 1.1 million kilowatts of power and irrigation of more than 5 million acres.

Since that time, changes in both the national economy and priorities, combined with the development of refined analytical tools and criteria have resulted in a significantly different project than was originally planned. Six dams have been constructed on the mainstem of the Missouri River, and numerous multi-purpose projects on the tributaries have been completed. Flood control and navigation benefits are greater than anticipated with navigation benefits estimated to be about \$17.7 million per year. Power development has exceeded expectations with an installed plant capacity of 220 percent of original estimates and hydropower sales averaging \$200 million annually. Benefits from recreational development have also exceeded the original plan. Irrigation development, on the other hand, has fallen well short of original goals with less than 600,000 (11%) of the planned 5.3 million acres having been developed.

### **Issues Where We Have Reached Agreement**

Since H.R. 1137 was introduced in March 1999, the Administration and the delegation have met many times and have made significant progress in resolving the Administration's serious concerns about the proposal. The following describes the modification that were made in H.R. 2918 to resolve outstanding issues mentioned in past Administration testimony on the Dakota Water Resources Act:

- **MR&I Facility Funding:** The Administration recognizes that additional need exists for good quality water for domestic and other purposes in a large portion of the State. The Administration supports the bill's proposed \$200 million authorization of MR&I funding for Indian communities, and the proposed \$200 million loan at the project's original authorization interest rate for construction of facilities in the Red River Valley. In addition, the Administration supports extending the current grant authorization to address other State-wide MR&I needs by an additional \$200 million, a reduction of \$100,000,000 from the previous proposal, with a 25 percent local cost-sharing.

This combination of authorizations would provide a total of \$600 million in new Federal funding authority to address priority needs within the State for quality water in a way that addresses continuing Federal budget constraints. We also believe it is important that this package of programs includes repayment of funding provided for Red River Valley facilities. This repayment reflects the Administration's long-standing policy that in the case of non-Indian rural water supply system development, non-Federal interests should repay 100 percent of allocated project construction costs with interest.

- **Operation and Maintenance:** Consistent with long-standing cost-allocation procedures, the State would pay: 1) a pro-rata share of OM&R on existing principal supply works, including associated mitigation, based on a percentage of capacity used; 2) 100 percent of OM&R on all new facilities with

the exception of facilities required to meet treaty obligations or to comply with Reclamation law; and  
3) all energy costs with the same exceptions.

- **Irrigation Development:** The development of 28,000 acres of undesignated irrigation “not located in the Hudson’s Bay, Devils Lake or James River drainage basins” would be required to meet an economic feasibility test with respect to national economic development benefits – thereby holding this project to the same standard as other Federal other projects.
- **International Treaty Compliance:** Before any construction is undertaken on any part of the system capable of moving water into the Hudson Bay basin, the Secretary of the Interior, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, must determine that adequate steps have been taken to meet requirements of the U.S.-Canada Boundary Waters Treaty. This will ensure that the United States’ obligation under the Boundary Waters Treaty is carried out. However, the Administration would like the adopted technical changes that we have submitted to make the bill more consistent with treaty obligations.
- **Four Bears Bridge:** Reconstruction of Four Bears Bridge would not be accomplished through the Bureau of Reclamation.
- **Red River Valley Water Needs Assessment Studies:** Completion of a report by the Secretary of the Interior and the State of North Dakota on the comprehensive water quality and quantity needs of the Red River Valley and options for meeting those needs, including delivery of Missouri River water to the Red River Valley, would include consultations with the Environmental Protection Agency, the U.S. Department of State, the U.S. Army Corps of Engineers, and other interested and affected entities, including the states of South Dakota, Iowa, Missouri, Minnesota, and the appropriate Federally recognized Indian tribes.
- **Status of MR&I Grant Funds:** All MR&I grant funds, including accrued interest, would be managed as “Federal” for the purposes of compliance with Federal laws such as NEPA and the National Historic Preservation Act.
- **Completion of the Principal Supply Works:** Completing and maintaining the principal supply works identified in the 1984 Garrison Diversion Unit Commission Final Report would not be a requirement of law, but would be one of the alternatives to be reviewed to meet the comprehensive water quality and quantity needs of the Red River Valley and the options for meeting those needs.
- **Natural Resources Trust:** There would be no linkage between contributions to the Trust and the Red River Valley Water Supply Project.

### **Outstanding Concerns:**

With respect to the Natural Resources Trust, however, the Administration remains concerned about the proposed elimination of the state and local contribution to the Trust that was established by the 1986 Act. This would give the State no financial stake in the Trust Fund and would reduce our efforts to make this into a partnership.

Furthermore, in addition to the technical changes for international treaty compliance, there are technical amendments requested by the Treasury Department relating to calculation of the interest rates for capital

costs and relating to oversight of the Natural Resources Trust which we request be included in H.R. 2918.

We also note that H.R. 2918, as currently drafted, may affect revenues and therefore, may effect the Pay-As-You Go provisions of the Omnibus Budget Reconciliation Act of 1980.

Mr. Chairman, I would like to reiterate my appreciation to the North Dakota delegation and others for working with the Administration to address the significant issues that are associated with this legislation. A great deal of hard work has taken place and significant progress has been made. I would like to continue that effort to work with the project sponsors and supporters as well as the opponents to try to find a solution to what has become a long standing and difficult issue.

That concludes my statement, I would be happy to answer any questions.

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